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COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

AT RICHMOND, AUGUST 6, 2002

APPLICATION OF

THE CITY OF CHESAPEAKE

CASE NO. PUE-2002-00096

For approval of the condemnation  
of a utility easement containing  
4,214 square feet or 0.00967  
acre,  
more or less, for the  
installation  
of a water transmission line on  
land owned by the City of Suffolk  
and located in the Sleepy Hole  
Borough of the City of Suffolk

ORDER

On March 1, 2002, the City of Chesapeake ("Chesapeake")  
filed an application with the State Corporation Commission  
("Commission") requesting approval, pursuant to § 25-233 of  
the Code of Virginia ("Code"), to initiate a condemnation  
action to acquire property of the City of Suffolk ("Suffolk").  
The application indicated that Chesapeake sought to acquire a  
parcel of land owned by Suffolk to install a raw water  
transmission line to carry water from Lake Gaston to supply  
water to the citizens of Chesapeake.<sup>1</sup> Chesapeake requested

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<sup>1</sup> The application for condemnation identified the desired utility easement as crossing land described on a plat entitled "Plat Showing Permanent Utility Easement to be Acquired from City of Suffolk by the City of Chesapeake, Virginia, for City of Chesapeake, Virginia, Raw Water Transmission System, Sleepy Hole Borough - Suffolk, Virginia, Scale=1"=30'," dated April 28, 1998, revised May 24, 2001, made by Rouse-Sirine Associates, Ltd.

that the Commission certify that a public necessity and/or essential public convenience requires Chesapeake to acquire an easement via condemnation.

The Commission entered an Order on March 7, 2002, permitting Suffolk to file a response to Chesapeake's application. On March 26, 2002, Suffolk filed its response which, among other things, denied many of the allegations contained in Chesapeake's application and requested that the Commission find that no public necessity or convenience exists requiring the condemnation action.

Thereafter, on April 29, 2002, the Commission directed both parties to file, on or before May 10, 2002, a joint stipulation of pertinent matters of fact not in dispute and a statement of matters of fact in dispute. The Commission also permitted the parties to file requests for oral argument on or before May 10, 2002, and legal memoranda supporting its position on or before May 17, 2002. On May 14, 2002, and May 24, 2002, the Commission granted requests for extension of the deadlines to file the stipulation, statement of facts, and legal memoranda. The deadline for filing the stipulation and statement of facts was ultimately extended to on or before June 12, 2002, while the deadline for filing legal memoranda was ultimately extended to on or before June 19, 2002.

On June 7, 2002, stating that settlement had not been reached, Chesapeake filed its Statement of Facts. Among other things, Chesapeake stated that Suffolk City Council had planned to consider Chesapeake's request for an easement on June 5, 2002, and that Chesapeake had faxed to Suffolk a proposed deed of easement on May 30, 2002.<sup>2</sup> Chesapeake indicated, however, that on June 5, 2002, Suffolk faxed a different easement agreement to Chesapeake, which contained language objectionable to Chesapeake.<sup>3</sup>

On June 12, 2002, Suffolk filed a response taking issue with aspects of Chesapeake's Statement of Facts. Among other things, Suffolk stated that the language Suffolk employed in the deed it drafted was the same language used by Chesapeake in its application and other filings with the Commission and consistent with a Chesapeake City Council resolution and other transmittals between the parties.<sup>4</sup>

On June 18, 2002, and June 19, 2002, respectively, Chesapeake and Suffolk filed legal memoranda in support of their respective positions.

On June 26, 2002, Chesapeake filed a Motion to Amend Application of Chesapeake and an amended application which,

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<sup>2</sup> Chesapeake's proposed deed stated that it was for a utility easement across certain property for raw water transmission purposes.

<sup>3</sup> On June 5, 2002, Suffolk City Council continued consideration of the matter until June 19, 2002.

<sup>4</sup> Suffolk's easement agreement stated that the easement across certain land was to transmit Chesapeake's share of the Lake Gaston raw water supply.

among other things, indicated that it wished to clarify that Chesapeake sought to acquire the utility easement to install a raw water transmission line to carry water from Lake Gaston, as well as other sources, to supply water to Chesapeake. This motion is pending before the Commission.

On June 26, 2002, Suffolk filed a Motion to Dismiss arguing that, on June 19, 2002, Suffolk granted the easement to Chesapeake as requested in the application before the Commission. Therefore, Suffolk requested that the Commission dismiss the application as condemnation was no longer required. This motion is pending before the Commission.

On July 1, 2002, Chesapeake filed a Motion to Deny Suffolk's Motion to Dismiss.<sup>5</sup> Chesapeake argued that its motion to amend its initial application, with the attached Chesapeake City Council Resolution adopted on June 25, 2002, along with the amended application, cures Suffolk's contention that Chesapeake has received what it has requested.

NOW THE COMMISSION, upon consideration of this matter, finds as follows. This case involves whether Chesapeake should be permitted access to the courts of the Commonwealth to attempt to condemn property needed for the proposed water

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<sup>5</sup> We will treat Chesapeake's Motion to Deny Suffolk's Motion to Dismiss as a response under 5 VAC 5-20-110 of the Commission's Rules of Practice and Procedure.

line.<sup>6</sup> Under § 25-233 of the Code, before Chesapeake may proceed with condemnation proceedings, the Commission must: (1) certify that a public necessity or an essential public convenience so requires; and (2) conclude that the property sought to be condemned is not essential to the purposes of Suffolk.

Chesapeake continues to assert that Suffolk has not provided the necessary easement, and that condemnation proceedings are required. We will continue this case by granting Chesapeake's Motion to Amend Application and denying Suffolk's Motion to Dismiss. We also will permit the parties to file supplemental statements of fact and supplemental legal memoranda to address the amended application.

Accordingly, IT IS HEREBY ORDERED THAT:

(1) Chesapeake's Motion to Amend Application is granted.

(2) Suffolk's Motion to Dismiss is denied.

(3) Chesapeake and Suffolk may file supplemental statements of fact addressing the amended application on or before August 23, 2002.

(4) Chesapeake and Suffolk may file supplemental legal memoranda addressing the amended application on or before August 30, 2002.

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<sup>6</sup> See, e.g., Application of the City of Virginia Beach, Opinion, Case No. PUE-1994-00048, 1995 S.C.C. Ann. Rept. 313, 314 (March 6, 1995).

(5) This matter is continued for further orders of the Commission.